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TODAY

DOA:.....Quinn, BB0026 – Transfer regulation of charitable organizations, professional fundraisers, and fundraising counsel from DSPS to DFI

FOR 2013-2015 BUDGET – NOT READY FOR INTRODUCTION

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1 AN ACT ...; relating to: the budget

Analysis by the Legislative Reference Bureau

SAFETY AND PROFESSIONAL SERVICES

PROFESSIONAL REGULATION

Under current law, DSPS regulates professional employer organizations and professional employer groups that contract with clients for, among other services, the nontemporary placement of employees with those clients. Also under current law, DSPS regulates the fund-raising activities of charitable organizations, professional fund-raisers, and fund-raising counsel.

This bill transfers the regulation of professional employer organizations, professional employer groups, charitable organizations, professional fund-raisers, and fund-raising counsel from DSPS to DFI. Under the bill, DFI registers all of those persons and administers the specific laws governing their practices. The bill also gives DFI a number of general powers and duties concerning the regulation of those persons that are similar to the powers and duties that DSPS exercises under current law with respect to the various professions DSPS, or a board under DSPS, regulates, including the following:

1. Under the bill, DFI may issue subpoenas for the attendance of witnesses and the production of documents or other materials before a disciplinary or other proceeding concerning a practice regulated by DFI under the bill.

2. Under the bill, DFI is required to establish the content and form of each type of registration it issues to a professional employer organization, professional employer group, charitable organization, professional fund-raiser, or fund-raising counsel, and DFI may require a registered person to display in the person's office or primary place of business the person's certificate of registration and a notice describing the procedures for filing a complaint with DFI concerning the person's professional conduct.

3. The bill requires DFI to obtain the social security number of an individual who applies for a registration under the bill, or the person's federal ~~tax~~ identification number if the person is a business. The bill restricts DFI's use and disclosure of social security numbers, as well as other personal identifying information under certain circumstances, that DFI obtains in connection with its regulatory functions under the bill.

4. Concerning the renewal of a registration, the bill requires DFI to give notice to the registered person before the registration's renewal date, and DFI may deny renewal if the registered person fails to comply with any applicable renewal requirement or if DFI determines that denial of the renewal application is necessary to protect the public health, safety, or welfare. If DFI denies an application for renewal of a registration, DFI must send a notice of denial to the registered person that states the reasons for the denial and informs the person that the denial may be appealed to the department.

5. The bill requires DFI to deny an application for a registration or take certain actions against a person registered by DFI if the person is liable for delinquent state taxes or if the person is delinquent in paying child support or fails to comply with a subpoena or warrant issued by the department of children and families or a county child support agency concerning a child support or paternity proceeding.

6. Under the bill, DFI may investigate an applicant for registration, and, subject to rules promulgated by DFI, DFI may investigate whether an applicant for registration or a registered person has a criminal history.

7. The bill authorizes DFI to investigate a complaint of misconduct against a person DFI registers. Any person may file such a complaint with DFI. DFI's burden of proof in a disciplinary proceeding against a registered person is a preponderance of the evidence. The bill also authorizes DFI to issue an administrative warning in lieu of conducting a disciplinary proceeding if certain requirements are met. DFI may charge a registered person the costs DFI incurs for a misconduct investigation and disciplinary proceeding.

8. Under the bill, DFI may conduct investigations, hold hearings, and make findings concerning a person's performance of a practice or use of a title without a required registration issued by DFI. DFI may enjoin such a person from continuing to perform a practice or use a title contrary to the laws DFI administers under the bill, or DFI may petition a circuit court to issue a temporary restraining order or an injunction against that person. If a person violates an order of DFI or a court enjoining the person's unlawful use of a title or performance of a practice regulated by DFI, that person may be subject to criminal penalties.

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Employer

9. Under the bill, DFI is required to determine the fee for an initial registration and registration renewal for each type of registration DFI administers under the bill. DFI may accept fee payments by means of a debit or credit card. Current fees remain in effect until adjusted by DFI. ✓

For further information see the **state** fiscal estimate, which will be printed as an appendix to this bill. ✓

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 SECTION 1. 45.44 (1) (a) 11m. of the statutes is created to read:

2 45.44 (1) (a) 11m. A registration issued under s. 202.13 or 202.14. ✓

3 SECTION 2. 49.857 (1) (d) 14m. of the statutes is created to read:

4 49.857 (1) (d) 14m. A registration issued under ss. 202.12 to 202.14 or 202.22. ✓

5 SECTION 3. 73.0301 (1) (d) 6. of the statutes is amended to read:

6 73.0301 (1) (d) 6. A license or certificate of registration issued by the
7 department of financial institutions, or a division of it, under ss. 138.09, 138.12,
8 138.14, 202.12 to 202.14, 202.22, 217.06, 218.0101 to 218.0163, 218.02, 218.04,
9 218.05, 224.72, 224.725, 224.93 or under subch. IV of ch. 551. ✓

10 SECTION 4. 108.02 (21e) (intro.) of the statutes is amended to read:

11 108.02 (21e) PROFESSIONAL EMPLOYER ORGANIZATION. (intro.) "Professional
12 employer organization" means any person who is currently registered as a
13 professional employer organization with the department of safety and professional
14 services financial institutions in accordance with subch. III of ch. 461 202, who
15 contracts to provide the nontemporary, ongoing employee workforce of more than one
16 client under a written leasing contract, the majority of whose clients are not under

Insert 3-4A

Insert 3-2

Insert 3-4B

Amended

1 the same ownership, management, or control as the person other than through the
2 terms of the contract, and who under contract and in fact:

3 **SECTION 5.** 125.06 (11) of the statutes is amended to read:

4 125.06 (11) AUCTION SALES. The sale by an auction house at public auction of
5 a collection of sealed bottles of intoxicating liquor or unopened beer cans for the
6 purpose of settling an estate or disposing of the collection or the auction sale of sealed
7 bottles or containers of wine or of unopened bottles of intoxicating liquor or
8 fermented malt beverages by a charitable organization, as defined in s. ~~440.41~~ 202.11 ✓
9 (1), at an auction held to raise money for the charitable organization.

istory: 1981 c. 79, 202; 1983 a. 222, 360, 538; 1985 a. 337; 1987 a. 399; 1989 a. 253; 1991 a. 269; 1993 a. 226; 1995 a. 225; 2001 a. 16; 2007 a. 9, 85, 216; 2011 a. 179, 200.

10 **SECTION 6.** 134.73 (1) (a) of the statutes is amended to read:

11 134.73 (1) (a) "Contribution" has the meaning given in s. ~~440.41~~ 202.11 (5). ✓

istory: 2001 a. 16.

12 **SECTION 7.** 134.73 (1) (c) of the statutes is amended to read:

13 134.73 (1) (c) "Solicit" has the meaning given in s. ~~440.41~~ 202.11 (8). ✓

istory: 2001 a. 16.

14 **SECTION 8.** 165.825 of the statutes is amended to read:

15 **165.825 Information link; ~~department of health services.~~** The
16 department of justice shall cooperate with the departments of safety and
17 professional services ~~and~~, health services, and financial institutions ✓ in developing
18 and maintaining a computer linkup to provide access to the information obtained
19 from a criminal history search.

istory: 1997 a. 27; 2007 a. 20 s. 9121 (6) (a); 2011 a. 32.

20 **SECTION 9.** 181.0203 (3) of the statutes is amended to read:

21 181.0203 (3) NOTIFICATION OF REPORTING REQUIREMENTS. Upon filing articles of
22 incorporation of a corporation, the department shall inform the corporation of the

reporting requirements under s. ~~440.42~~ 202.12 for charitable organizations that solicit contributions.

istory: 1997 a. 79.

SECTION 10. 196.208 (5p) (a) 1. of the statutes is amended to read:

196.208 (**5p**) (a) 1. "Charitable organization" has the meaning given in s.

~~440.41~~ 202.11 (1).

istory: 1991 a. 127; 1993 a. 361; 2001 a. 16.

SECTION 11. Chapter 202 of the statutes is created to read:

CHAPTER 202

REGULATION OF PROFESSIONAL EMPLOYER ORGANIZATIONS AND THE SOLICITATION OF FUNDS FOR A CHARITABLE PURPOSE

SUBCHAPTER I

GENERAL PROVISIONS

202.01 Definitions. In this subchapter:

(1) "Applicant" means any of the following:

(a) A person applying to the department for an initial registration.

(b) A person applying to the department for renewal of a registration.

(2) "Controlling person" has the meaning given in 202.21 (3).

(3) "Department" means the department of financial institutions.

(4) "Registrant" means a person who is registered under ss. 202.12 to 202.14

or 202.22.

(5) "Registration" means a registration the department issues under ss. 202.12

to 202.14 or 202.22.

202.02 General duties and powers. (1) The department may issue

subpoenas for the attendance of witnesses and the production of documents or other

1 materials prior to the commencement of a disciplinary or other proceeding under this
2 chapter.

3 (2) The department shall establish the content and form of each type of
4 registration. Upon the request of a registrant and payment of a \$10 fee, the
5 department may issue to a registrant a wall certificate signed by the governor.

6 (3) The department may by rule require a registrant to do any of the following:

7 (a) Display the registrant's certificate of registration in a conspicuous place in
8 the registrant's office or place of business.

9 (b) Post a notice in a conspicuous place in the registrant's office or place of
10 business describing the procedures for filing a complaint against the registrant.

11 (4) (a) The department shall require each applicant to provide his or her social
12 security number with the applicant's application for a registration or registration
13 renewal, or, if the applicant is not an individual, the department shall require the
14 applicant to provide its federal employer identification number.

15 (b) If an applicant is an individual who does not have a social security number,
16 the applicant shall submit a statement to the department made or subscribed under
17 oath that the applicant does not have a social security number. The department of
18 children and families shall prescribe the form of the statement. A registration issued
19 in reliance upon a false statement submitted under this paragraph is invalid.

20 (c) The department may not disclose a social security number obtained under
21 par. (a) to any person except the department of children and families to administer
22 s. 49.22 and the department of revenue to request certifications under s. 73.0301 and
23 administer state taxes.

24 (5) The department shall cooperate with the departments of justice and
25 children and families to develop and maintain a computer linkup to provide access

1 to information regarding the current status of a registration, including whether the
2 registration has been restricted in any way

3 (6) (a) The department may conduct an investigation to determine whether an
4 applicant satisfies any of the eligibility requirements specified for the registration,
5 including whether the applicant does not have an arrest or conviction record. In
6 conducting an investigation under this paragraph, the department may require an
7 applicant to provide any information that is necessary for the investigation, except
8 that, for an investigation of an arrest or conviction record, the department shall
9 comply with the requirements under pars. (c) and (d).

10 (b) A registrant who is convicted of a felony or misdemeanor anywhere in the
11 U.S. shall send a notice of the conviction by 1st class mail to the department within
12 48 hours after the entry of the judgment of conviction. The department shall by rule
13 determine what information and documentation the registrant shall include with
14 that notice.

15 (c) The department may investigate whether an applicant or registrant has
16 been charged with or convicted of a crime only pursuant to rules promulgated by the
17 department under this paragraph, including rules that establish the criteria the
18 department will use to determine whether an investigation under this paragraph is
19 necessary. ✓

20 (d) 1. Except as provided in subd. 2., the department may not require that an
21 applicant or registrant be fingerprinted or submit fingerprints in connection with a
22 registration.

23 2. The department shall require a person for whom the department conducts
24 an investigation under par. (c) to be photographed and fingerprinted on 2 fingerprint
25 cards, each bearing a complete set of the person's fingerprints. The department of

1 justice may submit the fingerprint cards to the federal bureau of investigation to
2 verify the identity of the persons fingerprinted and obtain records of their criminal
3 arrests and convictions.

4 (e) The department shall charge an applicant the fees, costs, or other expenses
5 the department incurs for conducting an investigation under this subsection.

6 **202.025 Registration renewal. (1) NOTICE OF RENEWAL.** (a) The department
7 shall give a notice of renewal to each registrant at least 30 days before the renewal
8 date of the registration. The department may give that notice by electronic
9 transmission.

10 (b) Failure to receive a notice of renewal is not a defense in any disciplinary
11 proceeding against a registrant or in any proceeding against a former registrant for
12 practicing without a registration. Failure to receive a notice of renewal does not
13 relieve a registrant from the obligation to pay a penalty for late renewal under sub.
14 (2).

15 **(2) LATE RENEWAL.** (a) Except as provided in rules promulgated under par. (b),
16 if the department does not receive an application to renew a registration before the
17 applicable renewal date, the registrant may restore the registration by payment of
18 the renewal fee determined by the department under s. 202.08 and a late fee of \$25.

19 (b) The department may promulgate rules requiring a registrant who fails to
20 renew a registration within 5 years after the applicable renewal date to complete
21 requirements to restore the registration, in addition to any applicable requirements
22 for renewal established under this chapter, that the department determines are
23 necessary to protect the public health, safety, or welfare. The rules may not require
24 the registrant to complete educational requirements or pass examinations that are

1 more extensive than the educational or examination requirements that are required
2 for an initial registration.

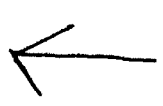
3 (3) DENIAL OF RENEWAL. (a) 1. If the department determines that an applicant
4 for registration renewal has failed to comply with any applicable requirement for
5 renewal, or that the denial of an application for renewal is necessary to protect the
6 public health, safety, or welfare, the department may summarily deny the
7 application for renewal.

8 2. If the department denies an application for renewal under subd. 1., the
9 department shall mail to the registrant a notice of denial that states the facts or
10 conduct giving rise to the denial and states that the registrant may, within 30 days
11 after the date on which the notice of denial is mailed, file a written request with the
12 department for the department to review the denial at a hearing.

13 (b) This subsection does not apply to a denial of a registration renewal under
14 s. 202.03 or 202.035 (2) (b).

15 **202.03 Registration denial, nonrenewal, or revocation based on tax**
16 **delinquency.** Notwithstanding ss. 202.12 to 202.14 and 202.22, the department
17 shall deny an application for an initial registration or for registration renewal, or
18 revoke a registration, if the department of revenue certifies under s. 73.0301 that the
19 applicant or registrant is liable for delinquent taxes, as defined in s. 73.0301 (1) (c).

121
***NOTE: I did not include a provision authorizing registration denial, etc., based
on incompetency, see s. 440.12, because under current law DSPS only applies that
provision if there is evidence that the license holder may physically harm him or herself
or another person in connection with the practice for which the license is issued by DSPS.
See s. 54.25 (2) (c) 1. d. While the question of physical harm is relevant to the medical
practices, etc., that question does not seem to come into play for the only registrations for
individuals (as opposed to entities) being transferred to DFI in this draft--for
professional fund-raisers and for fund-raising counsel. Nevertheless, please let me
know if you want to include a provision for registration denial, etc., based on
incompetency.



1 **202.035 Delinquency in support payments; failure to comply with**
2 **subpoena or warrant.** (1) In this section, "support" has the meaning given in s.
3 49.857 (1) (g).

4 (2) Notwithstanding ss. 202.12 to 202.14 and 202.22, the department shall do
5 all of the following, subject to the memorandum of understanding between the
6 department and the department of children and families under s. 49.857:

7 (a) Restrict, limit, or suspend a registration, or deny an application for an
8 initial registration, if the registrant, applicant, or a controlling person of the
9 registrant ^{or applicant} is delinquent in paying support or fails to comply, after appropriate notice,
10 with a subpoena or warrant related to support or paternity proceedings that is issued
11 by the department of children and families or a county child support agency under
12 s. 59.53 (5).

13 (b) Deny an application for registration renewal if the registrant or a
14 controlling person of the registrant is delinquent in paying support or fails to comply,
15 after appropriate notice, with a subpoena or warrant related to support or paternity
16 proceedings that is issued by the department of children and families or a county
17 child support agency under s. 59.53 (5).

****NOTE: I did not include the authority to revoke a registration for delinquency in child support because that power is not included for DSPS under current law. See s. 440.13. Please let me know if you want to include the power to revoke a registration for delinquency in child support. Note that the power to deny a renewal application is included.

****NOTE: Also, I included "controlling person" language in the above provision regarding delinquency in child support because current law includes a "controlling person" for that purpose. See s. 461.02 (9) (bm) 3. Please let me know if you want to of any of the other general provisions created for DFI in the draft under ss. 202.02 to 202.09 to apply to a controlling person. See the definition of a controlling person under s. 461.01 (3).

18 **202.04 Voluntary surrender of registration.** A registrant may voluntarily
19 surrender his or her registration. The department may refuse to accept that

surrender if a complaint has been filed or a disciplinary proceeding has been commenced against the registrant.

202.05 Nondisclosure of certain personal information. (1) (intro.) In this section:

(a) "List" means information compiled or maintained by the department that contains the personal identifiers of at least 10 individuals.

(b) "Personal identifier" means a social security number, telephone number, street name and number, electronic mail address, or post-office box number.

(2) If a form that the department requires an individual to complete in connection with a registration or registration renewal under this chapter requires the individual to provide a personal identifier of the individual, the form shall include a place for the individual to declare that the individual's personal identifier obtained by the department from the information on the form may not be disclosed on any list that the department furnishes to another person.

(3) If the department requires an individual to provide in person or by telephone or other electronic means a personal identifier of the individual in connection with a registration or registration renewal under this chapter, the department shall provide the individual an opportunity to declare that the individual's personal identifier may not be disclosed on any list that the department furnishes to another person.

(4) Upon request, the department shall provide to a registrant who is an individual a form that includes a place for the individual to declare that the individual's personal identifier obtained by the department by any means may not be disclosed on any list that the department furnishes to another person.

1 (5) (a) Except as provided in par. (b), the department may not disclose on any
2 list that it furnishes to another person a personal identifier of any individual who has
3 made a declaration under sub. (2), (3), or (4).

4 (b) Paragraph (a) does not apply to a list that the department furnishes to
5 another state agency, a law enforcement agency, or a federal governmental agency.
6 A state agency that receives a list from the department containing a personal
7 identifier of an individual who has made a declaration under sub. (2), (3), or (4) may
8 not disclose the personal identifier to any person other than a state agency, a law
9 enforcement agency, or a federal governmental agency.

10 **202.055 Change of name or address.** (1) An applicant or registrant that
11 undergoes a change of name or address shall notify the department of the applicant's
12 or registrant's new name or address within 30 days after the change in writing or in
13 accordance with other notification procedures approved by the department.

14 (2) The department may serve any process, notice, or demand on a registrant
15 by mailing it to the last-known address of the registrant as indicated in the
16 department's records.

17 (3) Any person who fails to comply with sub. (1) shall be subject to a forfeiture
18 of \$50.

19 **202.06 Disciplinary proceedings.** (1) Any person may file a complaint with
20 the department, requesting the department to commence disciplinary proceedings
21 against a registrant, and the department may investigate that complaint.

22 (2) The department's burden of proof in a disciplinary proceeding against a
23 registrant is a preponderance of the evidence.

24 **202.065 Assessment of costs.** (1) In this section, "costs of the proceeding"
25 means the compensation and reasonable expenses of hearing examiners and of

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1 prosecuting attorneys for the department, a reasonable disbursement for the service
2 of process or other papers, and amounts actually paid for photocopies, certified copies
3 of records in a public office, postage, telephoning, adverse examinations and
4 depositions, court reporter fees and expenses, witness fees and expenses, expert
5 witness fees and expenses, ^e and an investigator fees and expenses.

6 (2) In any disciplinary proceeding against a registrant in which the
7 department orders suspension, limitation, or revocation of the registration or
8 reprimands the registrant, the department may, in addition to imposing discipline,
9 assess all or part of the costs of the proceeding against the registrant. Costs assessed
10 under this subsection are payable to the department. Interest shall accrue on costs
11 assessed under this subsection at a rate of 12 percent per year beginning on the date
12 that payment of the costs becomes due as ordered by the department. Upon the
13 request of the department, the department of justice may commence an action to
14 recover costs assessed under this subsection and any accrued interest.

15 (3) If the department assesses costs of the proceeding to a registrant under sub.
16 (2), the department may not restore, renew, reinstate, or otherwise issue any
17 registration to the registrant until the registrant pays those costs in full, together
18 with any accrued interest.

19 **202.07 Administrative warnings.** (1) If the department determines during
20 an investigation of a complaint against a registrant that there is evidence that the
21 registrant committed misconduct, the department may close the investigation by
22 issuing an administrative warning to the registrant if the department determines
23 that no further disciplinary action is warranted, the complaint involves a first
24 occurrence of a minor violation, and the issuance of an administrative warning
25 adequately protects the public.

1 (2) A registrant may obtain review of an administrative warning through a
2 personal appearance before the department.

3 (3) (a) An administrative warning does not constitute an adjudication of guilt
4 or the imposition of discipline and, except as provided in par. (b), may not be used as
5 evidence that the registrant is guilty of the alleged misconduct.

6 (b) If the department receives a subsequent complaint of misconduct by a
7 registrant against whom the department issued an administrative warning, the
8 department may reopen the matter that gave rise to the administrative warning and
9 commence disciplinary proceedings against the registrant, and the administrative
10 warning may be used as evidence that the registrant had actual notice that the
11 misconduct that was the basis for the administrative warning was contrary to law.

12 (4) The fact that the department issued an administrative warning is a public
13 record. The contents of an administrative warning shall remain private and
14 confidential and are not subject to inspection or copying under s. 19.35.

15 (5) The department shall promulgate rules establishing uniform procedures
16 for the department's issuance and use of administrative warnings.

17 **202.075 Enforcement of laws requiring registration.** (1) The department
18 may conduct investigations, hold hearings, and make findings as to whether a person
19 has engaged in a practice or used a title without a registration required under ss.
20 202.12 to 202.14 or 202.22.

21 (2) If, after holding a public hearing, the department determines that a person
22 has engaged in a practice or used a title without a registration required under ss.
23 202.12 to 202.14 or 202.22, the department may issue a special order enjoining the
24 person from continuing the practice or use of the title.

(3) In lieu of holding a public hearing, if the department has reason to believe that a person has engaged in a practice or used a title without a registration required under ss. 202.12 to 202.14 or 202.22, the department may petition the circuit court for a temporary restraining order or an injunction as provided in ch. 813.

(4) (a) Any person who violates a special order issued under sub. (2) may be required to forfeit not more than \$10,000 for each offense. Each day of continued violation constitutes a separate offense. The attorney general or any district attorney may commence an action in the name of the state to recover a forfeiture under this paragraph.

(b) Any person who violates a temporary restraining order or an injunction issued by a court upon a petition under sub. (3) may be fined not less than \$25 nor more than \$5,000 or imprisoned for not more than one year in the county jail or both.

202.08 Fees. Biennially, the department shall determine the fee for an initial registration and for a registration renewal for each type of registration under ss. 202.12 to 202.14 and 202.22 based on the department's administrative and enforcement costs attributable to the department's regulation of charitable organizations, fund-raising counsel, professional fund-raisers, professional employer organizations, and professional employer groups.

Cancellation
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202.09 Debit or credit card payments; revocation of registration for nonpayment by financial institution. (1) If the department permits the payment of a fee by use of a debit or credit card, the department shall charge a service charge for each transaction in addition to the fee being paid. The service charge shall be sufficient to cover the cost to the department of permitting the payment of a fee by debit or credit card.

(2) If a registrant pays a fee required under this chapter by check or by debit or credit card and the check is not paid by the financial institution upon which the check is drawn or if the demand for payment under the debit or credit card transaction is not paid by the financial institution upon which demand is made, the department may ~~revoke~~ ^{cancel} the registration after 60 days after the department receives a notice of nonpayment from the financial institution, subject to sub. (3). ^{cancelling}

(3) At least 20 days before ~~revoking~~ a registration under sub. (2), the department shall mail a notice to the registrant that informs the registrant that the check or demand for payment under the debit or credit card transaction was not paid by the financial institution and that the registrant's registration may be ~~revoked~~, unless the registrant does all of the following before that date: ^{cancel} ^{use 2x}

(a) Pays the fee for which the unpaid check or demand for payment under the debit or credit card transaction was issued.

(b) Pays any applicable late fee.

(c) Pays the charge for an unpaid draft established by the depository selection board under s. 20.905 (2). ^{cancellation}

(4) The department may extend the date for ~~revocation~~ to allow the registrant additional time to comply with sub. (3) (a) to (c).

(5) The department may reinstate a registration that it ~~revoked~~ under this section only if the former registrant complies with sub. (3) (a) to (c) and pays a \$30 reinstatement fee.

202.11 (5m) "Department" means the department of financial institutions.

202.21 (3m) "Department" means the department of financial institutions.

SECTION 12. 440.03 (7m) of the statutes is amended to read:

Insert 16-231

1 **440.03 (7m)** The department may promulgate rules that establish procedures
2 for submitting an application for a credential or credential renewal by electronic
3 transmission. Any rules promulgated under this subsection shall specify procedures
4 for complying with any requirement that a fee be submitted with the application.
5 The rules may also waive any requirement in chs. 440 to 480 that an application
6 submitted to the department, an examining board or an affiliated credentialing
7 board be executed, verified, signed, sworn or made under oath, notwithstanding ss.
8 440.26 (2) (b), ~~440.42 (2) (intro.)~~, 440.91 (2) (intro.), 443.06 (1) (a), 443.10 (2) (a),
9 445.04 (2), 445.08 (4), 445.095 (1) (a), 448.05 (7), 450.09 (1) (a), 452.10 (1) and 480.08
10 (2m).

istory: 1977 c. 418 ss. 24, 792; 1979 c. 34, 221, 337; 1981 c. 94; 1985 a. 29, 340; 1989 a. 31, 340; 1991 a. 39; 1993 a. 16, 102, 107, 443, 445, 490, 491; 1995 a. 27 ss. 6472g, 6472j, 9126 (19); 1995 a. 233; 1997 a. 27, 75, 79; 1997 a. 191 ss. 312, 313, 318; 1997 a. 231, 237; 1997 a. 261 ss. 1 to 4, 7, 10, 13; 1997 a. 311; 1999 a. 9, 32; 2001 a. 16, 66, 80; 2003 a. 151; 2005 a. 25; 2007 a. 20 ss. 3449 to 3462, 9121 (6) (a); 2007 a. 153, 189; 2009 a. 28, 130, 276, 282, 355; 2011 a. 32, 146, 160, 190, 255.

11 **SECTION 13.** 440.03 (13) (b) 29. of the statutes is repealed. x

12 **SECTION 14.** 440.03 (13) (b) 57m. of the statutes is repealed. x

13 **SECTION 15.** 440.03 (13) (b) 58. of the statutes is repealed. x

14 **SECTION 16.** 440.05 (intro.) of the statutes is amended to read:

15 **440.05 Standard fees.** (intro.) The following standard fees apply to all initial
16 credentials, except as provided in ss. ~~440.42~~, ~~440.43~~, ~~440.44~~, 440.51, 444.03, 444.11,
17 446.02 (2) (c), 447.04 (2) (c) 2., 449.17 (1m) (d), and 449.18 (2) (d):

istory: 1977 c. 29, 418; 1979 c. 34; 1979 c. 175 s. 53; 1979 c. 221 s. 2202 (45); 1983 a. 27; 1985 a. 29; 1987 a. 264, 265, 329, 399, 403; 1989 a. 31, 229, 307, 316, 336, 340, 341, 359; 1991 a. 39, 269, 278, 315; 1993 a. 16; 1995 a. 27; 1997 a. 27, 96; 1999 a. 9; 2001 a. 16; 2003 a. 150, 270, 285, 327; 2005 a. 25, 297; 2007 a. 20; 2011 a. 209.

18 **SECTION 17.** 440.08 (2) (a) 23m. of the statutes is repealed. ✓ x

19 **SECTION 18.** 440.08 (2) (a) 35m. of the statutes is repealed. / >

20 **SECTION 19.** 440.08 (2) (a) 63p. of the statutes is repealed. / >

21 **SECTION 20.** 440.08 (2) (a) 63t. of the statutes is repealed. / >

22 **SECTION 21.** Subchapter IV (title) of chapter 440 [precedes 440.41] of the
23 statutes is renumbered subchapter II (title) of chapter 202 [precedes 202.11]. ✓

2013 - 2014 Legislature

Sec. #. ~~440~~ 440

- 18 -

intro.

~~440~~ 440

intro.

LRB-0221/P1

MPG:.....

SECTION 22

SECTION 22. 404.41 (1) of the statutes is renumbered 202.11 (1).

SECTION 23. 404.41 (2) (intro.) of the statutes is renumbered 202.11 (2) (intro.).

SECTION 24. 404.41 (2) (a) of the statutes is renumbered 202.11 (2) (a).

SECTION 25. 440.41 (2) (b) of the statutes is renumbered 202.11 (2) (b) and amended to read:

202.11 (2) (b) A benevolent, educational, philanthropic, humane, scientific, patriotic, social welfare or advocacy, public health, environmental conservation, civic, or other eleemosynary objective.

SECTION 26. 440.41 (3) of the statutes is renumbered 202.11 (3) and amended to read:

202.11 (3) "Charitable sales promotion" means an advertising or sales campaign, that is conducted by a person who is regularly and primarily engaged in trade or commerce for profit other than in connection with soliciting, ~~which and that~~ represents that the purchase or use of goods or services offered will benefit, in whole or in part, a charitable organization or charitable purpose.

SECTION 27. 404.41 (4) of the statutes is renumbered 202.11 (4).

SECTION 28. 440.41 (5) of the statutes is renumbered 202.11 (5) (intro.) and amended to read:

202.11 (5) (intro.) "Contribution" means a grant or pledge of money, credit, property, or other thing of any kind or value, except used clothing or household goods, to a charitable organization or for a charitable purpose. "Contribution" does not include income from ~~bingo~~ any of the following:

(a) Bingo or raffles conducted under ch. 563, ~~a.~~

(b) A government grant, ~~or a.~~

1 (c) A bona fide fee, due, or assessment paid by a member of a charitable
2 organization, except that, if initial membership in a charitable organization is
3 conferred solely as consideration for making a grant or pledge of money to the
4 charitable organization in response to a solicitation, ~~the~~ that grant or pledge of
5 money is a contribution.

6 **SECTION 29.** 440.41 (6) of the statutes is renumbered 202.11 (6) (intro.) and
7 amended to read:

8 202.11 (6) (intro.) “Fund-raising counsel” means a person who, for
9 compensation, plans, manages, advises, consults, or prepares material for, or with
10 respect to, solicitation in this state for a charitable organization, but who does not
11 solicit ~~and who does not~~ in this state or employ, engage, or provide any person who
12 is paid to solicit ~~contributions~~ in this state. “Fund-raising counsel” does not include
13 ~~an~~ any of the following: ✓

14 (a) An attorney, investment counselor, or employee of a financial institution
15 who, in the normal course of his or her work as an attorney, investment counselor,
16 or employee of a financial institution, advises a person to make a contribution ~~or a~~.

17 (b) A bona fide employee, volunteer, or salaried officer of a charitable
18 organization.

19 **SECTION 30.** 440.41 (7) of the statutes is renumbered 202.11 (7) (intro.) and
20 amended to read:

21 202.11 (7) (intro.) “Professional fund-raiser” means a person who, for
22 compensation, solicits in this state or employs, engages, or provides, directly or
23 indirectly, another person who is paid to solicit in this state. “Professional
24 fund-raiser” does not include ~~an~~ any of the following:

1 (a) An attorney, investment counselor, or employee of a financial institution
2 who, in the normal course of his or her work as an attorney, investment counselor,
3 or employee of a financial institution, advises a person to make a charitable
4 contribution, ~~an~~.

5 (b) A bona fide employee, volunteer, wholly owned subsidiary, or salaried officer
6 of a charitable organization, ~~an~~.

7 (c) An employee of a temporary help agency who is placed with a charitable
8 organization ~~or a~~.

9 (d) A bona fide employee of a person who employs another person to solicit in
10 this state.

11 **SECTION 31.** ~~404.41~~ (8) of the statutes is renumbered 202.11 (8).

12 **SECTION 32.** ~~404.41~~ (9) (intro.) of the statutes is renumbered 202.11 (9) (intro.).

13 **SECTION 33.** ~~404.41~~ (9) (a) of the statutes is renumbered 202.11 (9) (a).

14 **SECTION 34.** 440.41 (9) (b) of the statutes is renumbered 202.11 (9) (b) and
15 amended to read:

16 202.11 (9) (b) An announcement to the news media or by radio, television,
17 telephone, telegraph, or other transmission of images or information concerning ~~the~~
18 a request for contributions a contribution by or for a charitable organization or for
19 a charitable purpose.

20 **SECTION 35.** 440.41 (9) (c) of the statutes is renumbered 202.11 (9) (c) and
21 amended to read:

22 202.11 (9) (c) The distribution or posting of a handbill, written advertisement,
23 or other publication ~~which~~ that directly or by implication seeks ~~contributions a~~
24 contribution.

1 **SECTION 36.** 440.41 (9) (d) (intro.) of the statutes is renumbered 202.11 (9) (d)
2 (intro.) and amended to read:

3 202.11 (9) (d) (intro.) The sale of, or offer or attempt to sell, a membership or
4 an advertisement, advertising space, book, card, tag, coupon, device, magazine,
5 merchandise, subscription, flower, ticket, candy, cookie, or other tangible item in
6 connection with any of the following:

istory: 1991 a. 278, 315; 1999 a. 9.

7 **SECTION 37.** 404.41 (9) (d) 1. of the statutes is renumbered 202.11 (9) (d) 1.

8 **SECTION 38.** 404.41 (9) (d) 2. of the statutes is renumbered 202.11 (9) (d) 2.

9 **SECTION 39.** 404.41 (9) (d) 3. of the statutes is renumbered 202.11 (9) (d) 3.

10 **SECTION 40.** 404.41 (10) of the statutes is renumbered 202.11 (10).

11 **SECTION 41.** 440.42 of the statutes is renumbered 202.12, and 202.12 (1) (b) 3.,
12 (c) and (d), (2) (b), (c), (g) and (L) 1. and 2., (3) (a) 2., (5) (a) 1., 2., 3., 3m. and 5. and
13 (7) (a), (b) and (c), as renumbered, are amended to read:

14 202.12 (1) (b) 3. Pays to the department a \$15 the registration fee determined
15 by the department under s. 202.08. ✓

16 (c) The department shall issue a certificate of registration to each charitable
17 organization that is registered under this subsection. Renewal applications shall be
18 submitted to the department, on a form provided by the department, ~~on or before the~~
19 ~~expiration date specified in s. 440.08 (2) (a)~~ by August 1 of each year and shall include
20 a registration statement that complies with sub. (2) and the renewal fee determined
21 by the department under s. ~~440.03 (9) (a)~~ 202.08. ✓

22 (d) Within 20 days after receiving an application for registration or for renewal
23 of a registration under this subsection, the department shall notify the charitable

1 organization of any deficiencies in the application, registration statement, or fee
2 payment.

3 (2) (b) The address and telephone number of the charitable organization and
4 the address and telephone number of any offices in this state or, if the charitable
5 organization does not have an address, the name, address, and telephone number of
6 the person having custody of its financial records.

7 (c) The names and the addresses of the officers, directors and, trustees, and the
8 principal salaried employees of the charitable organization.

9 (g) A statement of whether the charitable organization has ever had its
10 authority to solicit denied, suspended, revoked, or enjoined by a court or other
11 governmental authority.

12 (L) 1. A copy of the charitable organization's charter, articles of organization,
13 agreement of association, instrument of trust, constitution, or other organizational
14 instrument and bylaws.

15 2. A statement of the place where and the date when the charitable
16 organization was legally established, the form of its organization, and whether it has
17 tax-exempt status.

18 (3) (a) 2. A statement of support, revenue, expenses, and changes in fund
19 balance.

20 (5) (a) 1. A person that is exempt from filing a federal annual information
21 return under section 6033 (a) ~~(2)~~ (3) (A) (i) and (iii) and (C) (i) of the internal revenue
22 code (section 6033 (a) (3) (A) (i) and (iii) and (C) (i) of the internal revenue code)

23 2. A candidate for national, state, or local office or a political party or other
24 committee or group required to file financial information with the federal elections
25 commission or a filing officer under s. 11.02.

1 3. Except as provided in par. (b) and in rules promulgated under sub. (8), a
2 charitable organization ~~which~~ that does not intend to raise or receive contributions
3 in excess of \$5,000 during a fiscal year, if all of its functions, including solicitation,
4 are performed by persons who are unpaid for their services and if no part of its assets
5 or income inures to the benefit of, or is paid to, any officer or member of the charitable
6 organization.

7 3m. A fraternal, civic, benevolent, patriotic, or social organization that solicits
8 contributions solely from its membership.

9 5. A nonprofit, postsecondary educational institution accredited by a regional
10 accrediting agency or association approved under 20 USC 1099b, or an educational
11 institution and its authorized charitable foundations ~~which~~ that solicit contributions
12 only from its students and their families, alumni, faculty, trustees, corporations,
13 foundations, and patients.

14 (7) (a) Before a fund-raising counsel performs any material services for a
15 charitable organization that is required to be registered under sub. (1), the charitable
16 organization shall contract in writing with the fund-raising counsel, except as
17 provided in par. (c). Requirements for the contract are specified in s. ~~440.43~~ 202.13 ✓
18 (3).

19 (b) Before a professional fund-raiser performs any material services for a
20 charitable organization that is required to be registered under sub. (1), the charitable
21 organization shall contract in writing with the professional fund-raiser.
22 Requirements for the contract are specified in s. ~~440.44~~ 202.14 (4). ✓

23 (c) Paragraph (a) does not apply if the fund-raising counsel is exempt under
24 s. ~~440.43~~ 202.13 (6) from contracting in writing with the charitable organization. ✓

1 **SECTION 42.** 440.43 of the statutes is renumbered 202.13, and 202.13 (1) (a),
2 (b) 3. and (c), (3), (5) and (6), as renumbered, are amended to read:

3 202.13 (1) (a) Except as provided in sub. (6), no fund-raising counsel may at
4 any time have custody of contributions from a solicitation for a charitable
5 organization that is required to be registered under s. ~~440.42~~ 202.12 (1) unless the
6 fund-raising counsel is registered with the department under this subsection.

7 (b) 3. Pays to the department a ~~\$50~~ the registration fee determined by the
8 department under s. 202.08, except that no registration fee is required under this
9 subdivision for an individual who is eligible for the veterans fee waiver program
10 under s. 45.44.

11 (c) The department shall issue a certificate of registration to each fund-raising
12 counsel that is registered under this subsection. Renewal applications shall be
13 submitted to the department, on a form provided by the department, ~~on or before the~~
14 ~~date specified in s. 440.08 (2) (a)~~ by September 1 of each even-numbered year and
15 shall include the renewal fee determined by the department under ~~s. 440.03 (9) (a)~~
16 202.08 and evidence satisfactory to the department that the fund-raising counsel
17 maintains a bond that is approved under sub. (2).

18 **(3) CONTRACTS.** Except as provided in sub. (6), before a fund-raising counsel
19 performs any material services for a charitable organization that is required to be
20 registered under s. ~~440.42~~ 202.12 (1), the charitable organization and the
21 fund-raising counsel shall contract in writing, and the fund-raising counsel shall
22 file the contract with the department. The contract shall contain information that
23 will enable the department to identify the services that the fund-raising counsel is
24 to provide, including whether the fund-raising counsel will at any time have custody
25 of contributions.

no
strike

1 **(5) DEPARTMENT DISCLOSURE.** The department shall not disclose information
2 under sub. (4) (c) 1. except to the extent necessary for investigative or law
3 enforcement purposes and except that the department may, if requested under s.
4 49.22 (2m), disclose information regarding the name, address, or employer of or
5 financial information related to an individual to the department of children and
6 families or a county child support agency under s. 59.53 (5).

7 **(6) EXCEPTIONS.** This section does not apply to a fund-raising counsel who does
8 not intend to earn more than \$1,000 per year as a fund-raising counsel, except that
9 a fund-raising counsel who does not intend to earn more than \$1,000 but does earn
10 more than \$1,000 in a year shall, beginning 30 days after actually earning more than
11 \$1,000 in a year, comply with sub. (3) and, if the fund-raising counsel at any time has
12 custody of contributions for a charitable organization that is required to be registered
13 under s. 440.42 [✓]202.12 (1), register under sub. (1).

14 history: 1991 a. 278; 1995 a. 27; 1997 a. 191; 2007 a. 20.

14 **SECTION 43.** 440.44 of the statutes is renumbered 202.14, and 202.14 (1) (a),
15 (b) 3., (c) and (d), (3) (intro.), (4) (a), (7), (8), (9) (a) 2. ^gand (10) ^jas renumbered, are
16 amended to read:

17 202.14 (1) (a) No professional fund-raiser may solicit in this state for a
18 charitable organization that is required to be registered under s. 440.42 [✓]202.12 (1)
19 unless the professional fund-raiser is registered under this subsection.

20 (b) 3. Pays ~~to the department a \$50~~ [✓]the registration fee determined by the
21 department under s. 202.08, except that no registration fee is required under this
22 subdivision for an individual who is eligible for the veterans fee waiver program
23 under s. 45.44. [✓]

1 (c) The department shall issue a certificate of registration to each professional
2 fund-raiser that is registered under this subsection. Renewal applications shall be
3 submitted to the department, on a form provided by the department, ~~on or before the~~
4 ~~date specified in s. 440.08 (2) (a)~~ [✓] by September 1 of each even-[✓]numbered year and
5 shall include the renewal fee determined by the department under s. 440.03 (9) (a)
6 [✓] 202.08 and evidence satisfactory to the department that the professional fund-raiser
7 maintains a bond that is approved under sub. (2).

8 (d) Within 20 days after receiving an application for registration or for renewal
9 of a registration under this subsection, the department shall notify the professional
10 fund-raiser of any deficiencies in the application, bond, or fee payment.

11 (3) (intro.) Before performing services under a contract with a charitable
12 organization that is required to be registered under s. 440.42 [✓] 202.12 (1), a
13 professional fund-raiser shall file with the department a completed solicitation
14 notice in the form prescribed by the department. The charitable organization on
15 whose behalf the professional fund-raiser is acting shall file with the department a
16 written confirmation that the solicitation notice and any accompanying material are
17 true and complete to the best of its knowledge. The solicitation notice shall include
18 all of the following:

19 (4) (a) A professional fund-raiser and a charitable organization that is
20 required to be registered under s. 440.42 [✓] 202.12 (1) shall enter into a written contract
21 that clearly states the respective obligations of the professional fund-raiser and the
22 charitable organization and states the amount of gross revenue, raised under the
23 contract, that the charitable organization will receive. The amount of the gross
24 revenue that the charitable organization will receive shall be expressed as a fixed

1 percentage of the gross revenue or as an estimated percentage of the gross revenue,
2 as provided in pars. (b) to (d).

3 (7) FINANCIAL REPORT. Within 90 days after completing services under a
4 contract described in sub. (4), and on the anniversary of the signing of a contract
5 described under sub. (4) lasting more than one year, the professional fund-raiser
6 shall, if the charitable organization is required to be registered under s. 440.42 ✓
7 202.12 ✓ (1), account in writing to the charitable organization for all contributions
8 received and all expenses incurred under the contract. The charitable organization
9 shall retain the accounting for at least 3 years and make it available to the
10 department upon request.

11 (8) DEPOSITING CONTRIBUTIONS. A professional fund-raiser shall deposit, in its
12 entirety, a contribution of money received by the professional fund-raiser, on behalf
13 of a charitable organization required to be registered under s. 440.42 ✓ 202.12 (1), in
14 an account at a financial institution within 5 days after its receipt. The account shall
15 be in the name of the charitable organization. The charitable organization shall have
16 sole control of all withdrawals from the account.

17 (9) (a) 2. The name and residence address of each employee, agent, or other
18 person involved in the solicitation.

19 (10) NONDISCLOSURE. The department may not disclose information under sub.
20 (9) (a) 1. to any person except to the extent necessary for investigative or law
21 enforcement purposes and except that the department may, if requested under s.
22 49.22 (2m), disclose information regarding the name, address, or employer of or
23 financial information related to an individual to the department of children and
24 families or a county child support agency under s. 59.53 (5).

1 **SECTION 44.** 440.45 of the statutes is renumbered 202.15 and amended to read:

2 **202.15 Charitable sales promotions.** If a commercial coventurer conducts
3 a charitable sales promotion on behalf of a charitable organization that is required
4 to be registered under s. ~~440.42~~ [✓] 202.12 (1), the commercial coventurer shall disclose
5 in each advertisement for the charitable sales promotion the dollar amount, or
6 percentage of price, per unit of goods or services purchased or used that will benefit
7 the charitable organization or charitable purpose. If the actual dollar amount or
8 percentage cannot reasonably be determined on the date of the advertisement, the
9 commercial coventurer shall disclose an estimated dollar amount or percentage. The
10 estimate shall be based upon all of the relevant facts known to the commercial
11 coventurer and to the charitable organization regarding the charitable sales
12 promotion.

13 istory: 1991 a. 278.

13 **SECTION 45.** 440.455 of the statutes is renumbered 202.155, and 202.155 (1)

14 (intro.) and (b), (2)^e and (3) (intro.), as renumbered, are amended to read:

15 202.155 (1) (intro.) Except as provided in sub. (4), if a professional fund-raiser
16 or unpaid solicitor solicits a contribution for a charitable organization that is
17 required to be registered under s. ~~440.42~~ [✓] 202.12 (1), the professional fund-raiser or
18 unpaid solicitor shall, at the time of the solicitation or with a written confirmation
19 of a solicitation, prior to accepting a contribution, make the following disclosures to
20 the person from whom the contribution is solicited:

21 (b) That a financial statement of the charitable organization disclosing assets,
22 liabilities, fund balances, revenue, and expenses for the preceding fiscal year will be
23 provided to the person upon request.

1 (2) The financial statement under sub. (1) (b) shall, at a minimum, divide
2 expenses into categories of management and general, program services and
3 fund-raising. If the charitable organization is required to file an annual financial
4 report under s. ~~440.42~~ [✓] 202.12 (3) (a), the financial statement under sub. (1) (b) shall
5 be consistent with that annual financial report.

6 (3) (intro.) In addition to the requirements under subs. (1) and (2), except as
7 provided in sub. (4), if a professional fund-raiser solicits on behalf of a charitable
8 organization that is required to be registered under s. ~~440.42~~ [✓] 202.12 (1), all of the
9 following apply:

10 istory: 1991 a. 278, 315.

11 **SECTION 46.** 440.46 of the statutes is renumbered 202.16, and 202.16 (1)
12 (intro.), (b), (c), (e) and (g), as renumbered, are amended to read: ✓

13 202.16 (1) (intro.) No person may, in the planning, management, or execution
14 of a solicitation or charitable sales promotion, do any of the following:

15 (b) Imply that a contribution is for or on behalf of a charitable organization or
16 use any emblem, device, or printed matter belonging to or associated with a
17 charitable organization without first being authorized in writing to do so by the
18 charitable organization.

19 (c) Use a name, symbol, or statement so closely related or similar to that used
20 by another charitable organization that the use of the name, symbol, or statement
21 would tend to confuse or mislead a person being solicited.

22 (e) Lead anyone in any manner to believe that another person sponsors,
23 endorses, or approves a solicitation or charitable sales promotion if the other person
24 has not sponsored, endorsed, or approved the solicitation or charitable sales
 promotion in writing.

(g) Represent directly or by implication that a charitable organization will receive a fixed or estimated percentage of the gross revenue raised greater than that established under s. 440.44 202.14 (4).

istory: 1991 a. 278.

SECTION 47. 440.47 of the statutes is renumbered 202.17, and 202.17 (1), (2),

(3), and (5), as renumbered, are amended to read:

202.17 (1) PUBLIC RECORDS. Except as provided in ss. 440.43 202.13 (5) and 440.44 202.14 (10), registration statements, applications, reports, contracts, and agreements of charitable organizations, fund-raising counsel, professional fund-raisers, and unpaid solicitors and all other documents and information retained by or filed with the department under this subchapter are available for inspection or copying under s. 19.35 (1).

(2) FISCAL RECORDS; INSPECTION; RETENTION. All charitable organizations, fund-raising counsels, professional fund-raisers, and unpaid solicitors shall keep true records concerning activities regulated by this subchapter in a form that will enable them accurately to provide the information required by this subchapter. Upon demand, those records shall be made available to the department for inspection and copying. The records shall be retained by the charitable organization, fund-raising counsel, professional fund-raiser, or unpaid solicitor for at least 3 years after the end of the fiscal year to which they relate.

(3) EXCHANGE OF INFORMATION. The department may exchange with the appropriate authority of any other state or of the United States information with respect to charitable organizations, fund-raising counsel, professional fund-raisers, unpaid solicitors, and commercial coventurers.

(5) ~~SUBSTITUTE SERVICE UPON DEPARTMENT OF FINANCIAL INSTITUTIONS.~~ A charitable organization, fund-raising counsel, professional fund-raiser, or commercial coventurer that has its principal place of business outside of this state or is organized under laws other than the laws of this state and that is subject to this subchapter shall be considered to have irrevocably appointed the department of ~~financial institutions~~ as its agent for the service of process or notice directed to the charitable organization, fund-raising counsel, professional fund-raiser, or commercial coventurer or to any of its partners, principal officers, or directors in an action or proceeding brought under this subchapter. Service of process or notice upon the department of ~~financial institutions~~ shall be made by personally delivering to and leaving with the department of ~~financial institutions~~ a copy of the process or notice. That service shall be sufficient service if the department of ~~financial institutions~~ immediately sends notice of the service and a copy of the process or notice to the charitable organization, fund-raising counsel, professional fund-raiser, commercial coventurer, or other person to whom it is directed by registered mail, with return receipt requested, at the last address known to the department of ~~financial institutions~~.

istory: 1991 a. 278; 1995 a. 27.

SECTION 48. 440.475 of the statutes is renumbered 202.175 and amended to read:

202.175 Disciplinary actions. (1) The department may deny, limit, suspend, or revoke the registration of a charitable organization, fund-raising counsel, or professional fund-raiser, or may reprimand a charitable organization, fund-raising counsel, or professional fund-raiser that is registered under this subchapter, if the department finds that the charitable organization, fund-raising counsel, or

1 professional fund-raiser has made a false statement in any registration statement,
2 annual report, or other information required to be filed under, or has otherwise
3 violated, this subchapter or the rules promulgated under this subchapter.

4 (2) In addition to or in lieu of a reprimand or a denial, limitation, suspension,
5 or revocation of a ~~certificate~~ registration under sub. (1), the department may assess
6 against any person who violates this subchapter or the rules promulgated under this
7 subchapter a forfeiture of not less than \$100 nor more than \$1,000 for each violation.

8 history: 1991 a. 278.

8 **SECTION 49.** 440.48 of the statutes is renumbered 202.18, and 202.18 (1) (b),

9 (c) 1. and 2. (intro.) and a., (d) and (e), as renumbered, are amended to read:

10 202.18 (1) (b) Upon finding that a person has violated this subchapter or the
11 rules promulgated under this subchapter, the court may make any necessary order
12 or judgment, including but not limited to injunctions, restitution, and,
13 notwithstanding s. 814.04, award of reasonable attorney fees and costs of
14 investigation and litigation, and, except as provided in par. (c), may impose a
15 forfeiture of not less than \$100 nor more than \$10,000 for each violation.

16 (c) 1. A person who violates s. 440.47 [✓] 202.17 (4) (b) may be required to forfeit
17 not more than \$5,000, unless the person establishes reasonable cause for the
18 violation.

19 2. (intro.) A person who, with intent to avoid, prevent, or interfere with a civil
20 investigation under this subsection, does any of the following may be required to
21 forfeit not more than \$5,000:

22 a. Alters or by any other means falsifies, removes from any place, conceals,
23 withholds, destroys, or mutilates any documentary material in the possession,

1 custody, or control of a person subject to notice of the taking of testimony or
 2 examination of documents under s. ~~440.47~~ 202.17 (4).

3 (d) A charitable organization, fund-raising counsel, professional fund-raiser,
 4 commercial coventurer, or any other person who violates the terms of an injunction
 5 or other order entered under this subsection may be required to forfeit, in addition
 6 to all other remedies, not less than \$1,000 nor more than \$10,000 for each violation.
 7 The department of justice may recover the forfeiture in a civil action. Each separate
 8 violation of an order entered under this subsection is a separate offense, except that
 9 each day of a violation through continuing failure to obey an order is a separate
 10 offense.

11 (e) No charitable organization may indemnify an officer, employee, or director
 12 for any costs, fees, restitution, or forfeitures assessed against that individual by the
 13 court under par. (b), (c), or (d) unless the court determines that the individual acted
 14 in good faith and reasonably believed the conduct was in or not opposed to the best
 15 interests of the charitable organization.

istory: 1991 a. 278.

16 **SECTION 50.** 461.01 of the statutes is renumbered 202.21, and 202.21 (1) and
 17 (6) of the statutes, as renumbered, are amended to read:

18 202.21 (1) "Applicant" means a professional employer organization or a
 19 professional employer group that applies for registration under s. ~~461.02~~ 202.22.

20 (6) "Registrant" means a professional employer organization or a professional
 21 employer group that is registered under s. ~~461.02~~ 202.22.

22 **SECTION 51.** 461.02 (title) of the statutes is renumbered 202.22 (title).

23 **SECTION 52.** 461.02 (1) of the statutes is renumbered 202.22 (1), and 202.22 (1)

24 (b), as renumbered, is amended to read:

④ Chapter 461 (title) is renumbered subchapter III
 (title) of chapter 202 [precedes 202.21].

202.22 (1) (b) No person may designate as the person's title, or append to the person's name the words or letters, "professional employer organization," "P.E.O.," "professional employer group," "P.E.G.," "staff leasing company," "registered staff leasing company," "employee leasing company," or "administrative employer," or other similar titles or letters, or use ~~these~~ those titles, words, or letters to describe the person's business or represent that the person or the person's business is registered or licensed as a "professional employer organization," "P.E.O.," "professional employer group," "P.E.G.," "staff leasing company," "registered staff leasing company," "employee leasing company," or "administrative employer," unless the person is registered ~~by the department~~ under this ~~chapter~~ section.

SECTION 53. 461.02 (2) of the statutes is renumbered 202.22 (2), and 202.22 (2) (intro.), (d) and (e), as renumbered, are amended to read:

202.22 (2) APPLICATION FOR REGISTRATION. (intro.) Except as provided in sub. (7) (b), an applicant for registration under this section shall submit to the department an application for registration on a form prescribed by the department, together with the registration fee determined by the department under ~~(s. 440.03 (9))~~ (a) 202.08 and all of the following:

no strike

(d) A statement of ownership, which shall include the name and business experience of every controlling person, as defined in s. ~~461.01~~ 202.21 (3) (a), of the applicant.

(e) A statement of management, which shall include the name and business experience of every controlling person, as defined in s. ~~461.01~~ 202.21 (3) (b), of the applicant.

SECTION 54. 461.02 (3) of the statutes is repealed.

x

July 31

1 SECTION 55. 461.02 (4) of the statutes is renumbered 202.22 (4), and 202.22 (4)

2 (a), as renumbered, is amended to read:

3 202.22 (4) (a) ~~Renewal applications~~ A registrant shall be submitted submit a
4 renewal application, together with the applicable renewal fee determined by the
5 department under s. 440.03 (9) (a) 202.08, to the department on a form provided by
6 the department ~~on or before the applicable renewal date specified under s. 440.08 (2)~~

7 (a) by August 1 of each year. Except as provided in pars. (b) and (c) and sub. (7) (b),
8 the a registrant shall submit with each renewal application shall be accompanied by
9 a financial statement, as ~~that term is used~~ specified in sub. (2) (f) 1., updated to reflect
10 the current financial condition of the registrant.

11 SECTION 56. 461.02 (5) (title) of the statutes is renumbered 202.22 (5) (title).

12 SECTION 57. 461.02 (5) (a) of the statutes is renumbered 202.22 (5) (a) and
13 amended to read:

14 202.22 (5) (a) Except as provided in sub. (7) (b), a professional employer
15 organization or professional employer group that is domiciled outside this state, that
16 is registered or licensed as a professional employer organization or professional
17 employer group in another state, that does not maintain an office in this state or
18 directly solicit clients that are located or domiciled in this state, and that has no more
19 than 50 employees performing services for clients in this state on any given day may
20 apply for small operations registration under this section by filing with the
21 department a small operations registration form prescribed by the department and
22 paying the initial ~~credential~~ registration fee determined by the department under s.

23 ~~440.03 (9) (a)~~ 202.08. An applicant that is seeking small operations registration
24 shall, in addition to the information required under sub. (2) (a) to (e), provide the

no
strike

1 department with information and documentation showing that the applicant meets
2 the qualifications specified in this paragraph for small operations registration.

3 **SECTION 58.** 461.02 (5) (b) of the statutes is repealed. ✕

4 **SECTION 59.** 461.02 (5) (c) of the statutes is repealed. ✕

5 **SECTION 60.** 461.02 (5) (d) of the statutes is renumbered 202.22 (5) (d).

6 **SECTION 61.** 461.02 (5) (e) of the statutes is renumbered 202.22 (5) (e) and
7 amended to read:

8 202.22 (5) (e) A professional employer organization or professional employer
9 group registered under this subsection is not required to comply with the financial
10 capability requirement under s. ~~461.03~~ 202.23.

11 **SECTION 62.** 461.02 (6) of the statutes is renumbered 202.22 (6) ^{and amended to read:}

12 **SECTION 63.** 461.02 (7) of the statutes is renumbered 202.22 (7), and 202.22 (7)
13 (a), (b) and (c), as renumbered, are amended to read:

14 202.22 (7) (a) The department shall by rule provide for registration of a
15 professional employer organization or professional employer group on acceptance by
16 the department of a registration form, financial statement, or any other information
17 or documentation required under sub. (2), (4), (5), or (6), s. ~~461.03~~ 202.23, or rules
18 promulgated under s. ~~461.06~~ 202.26 in the form of an electronic record, as defined
19 in s. 137.11 (7) and, if a signature is required, on acceptance of an electronic
20 signature, as defined in s. 137.11 (8).

21 (b) The department may by rule provide for registration of a professional
22 employer organization or professional employer group without compliance with sub.
23 (2), (4), (5), or (6), s. ~~461.03~~ 202.23, or rules promulgated under s. ~~461.06~~ 202.26 on
24 acceptance by the department of assurance, provided by a bonded, independent, and
25 qualified assurance organization that has been approved by the department, that

Insert Wb-11

Fix component

202.26
1 provides assurance satisfactory to the department that the professional employer
2 organization or professional employer group is qualified to operate as a professional
3 employer organization or a professional employer group in this state.

4 (c) This subsection does not limit the authority of the department to require a
5 professional employer organization or professional employer group to register as
6 provided in sub. (2), (4), (5), or (6), to maintain proof of financial capability as
7 required under s. 461.03 202.23, or to comply with this chapter subchapter and the
8 rules promulgated under s. 461.06 this subchapter; to investigate an applicant or
9 registrant and deny registration or renewal registration under sub. (8), or to
10 investigate an applicant, registrant, or controlling person and take disciplinary
11 action under s. 461.05 202.25.

12 SECTION 64. 461.02 (8) of the statutes is renumbered 202.22 (8) and amended
13 to read:

14 202.22 (8) ISSUANCE OF REGISTRATION. The department shall investigate each
15 applicant or registrant who submits to the department an application for
16 registration or registration renewal under this section, together with the applicable
17 registration or registration renewal fee, to determine whether the applicant or
18 registrant is qualified for registration or for renewal registration. Except as provided
19 in s. 440.12 and 440.13 sub. (8g) or (8r), the department shall issue a registration or
20 renewal registration if, after completing the investigation, the department
21 determines that the applicant or registrant meets the requirements under this
22 chapter subchapter and rules promulgated under s. 461.06 this subchapter for
23 issuance or renewal of a registration and is satisfied that the applicant or registrant
24 will comply with this chapter subchapter and those rules.

25 SECTION 65. 461.02 (9) of the statutes is renumbered 202.22 (9).

SS. 202.03 and 202.035

1 **SECTION 66.** 461.03 of the statutes is renumbered 202.23 and amended to read:

2 **202.23 Financial capability.** Except as provided in s. ~~461.02~~ [✓]202.22 (5) (e)
3 or (7) (b), a professional employer organization or professional employer group shall
4 maintain one of the following:

5 (1) **WORKING CAPITAL REQUIREMENT.** Working capital, as defined by generally
6 accepted accounting principals, of not less than \$100,000, as shown in the financial
7 statement submitted to the department under s. ~~461.02~~ [✓]202.22 (2) (f) 1., (4), or (6).
8 If a professional employer organization or professional employer group has less than
9 \$100,000 in working capital, the department may issue a registration or renewal
10 registration contingent on the registrant meeting the working capital requirement
11 of this subsection no later than 180 days after the issuance of the registration or
12 renewal registration. During the period of contingent registration, the registrant
13 shall submit quarterly financial statements to the department accompanied by an
14 attestation by the chief executive officer of the registrant that all wages, salaries,
15 employee benefits, worker's compensation insurance premiums, payroll taxes,
16 unemployment insurance contributions, and other amounts that are payable to or
17 with respect to an employee of the registrant performing services for a client were
18 paid by the registrant when due.

19 (2) **ALTERNATIVE COMMITMENT.** A bond, certificate of deposit, escrow account, or
20 irrevocable letter of credit in an amount that is not less than \$100,000 or, if the
21 financial statement submitted to the department under s. ~~461.02~~ [✓]202.22 (2) (f) 1., (4),
22 or (6) indicates a deficit in working capital, a bond, certificate of deposit, escrow
23 account, or irrevocable letter of credit in an amount that is not less than \$100,000
24 plus an amount that is sufficient to cover that deficit. The commitment described in
25 this subsection shall be in a form approved by the department, shall be held in a

depository designated by the department, and shall secure the payment by the professional employer organization or professional employer group of any wages, salaries, employee benefits, worker's compensation insurance premiums, payroll taxes, unemployment insurance contributions, or other amounts that are payable to or with respect to an employee performing services for a client if the professional employer organization or professional employer group does not make those payments when due. The commitment shall be established in favor of or be made payable to the department, for the benefit of the state and any employee to whom or with respect to whom the professional employer organization or professional employer group does not make a payment described in this subsection when due. The professional employer organization or professional employer group shall file with the department any agreement, instrument, or other document that is necessary to enforce the commitment against the professional employer organization or professional employer group, or against any relevant 3rd party, or both.

fit component

SECTION 67. 461.04 of the statutes is renumbered 202.24.

SECTION 68. 461.05 of the statutes is renumbered 202.25, and 202.25 (1) and (2) (intro.), (a), (b) and (d), as renumbered, are amended to read:

202.25 (1) INVESTIGATIONS. Subject to the rules promulgated under s. 440.03

(1), the The department may conduct investigations and hearings to determine whether a violation of this chapter subchapter or any rule promulgated under s.

461.06 this subchapter has occurred. 202.26 no strike

(2) DISCIPLINARY ACTION. (intro.) Subject to the rules promulgated under s. 440.03 (1), the The department may reprimand a professional employer organization or professional employer group or deny, limit, suspend, revoke, restrict, refuse to

and 202.24(3), as renumbered, is amended to read:

Insert 39-15

1 renew, or otherwise withhold a registration if the department finds that an
2 applicant, registrant, or controlling person has done any of the following:

3 (a) Conducted any of the activities specified in s. ~~461.02~~ 202.22 (1) without first
4 registering with the department as provided in s. ~~461.02~~ 202.22.

5 (b) Knowingly made a material misrepresentation or false statement in an
6 application for registration or for renewal of a registration under s. ~~461.02~~ 202.22 or
7 in a report under s. 108.067.

8 (d) Willfully committed a violation of this ~~chapter~~ subchapter or of a rule
9 promulgated under ~~s. 461.06~~ this subchapter 202.26 (intro.)
10 *no strike*

SECTION 69. 461.06 of the statutes is renumbered 202.26, and 202.26 (1) and
(2) and

11 (3), as renumbered, are amended to read:

12 202.26 (1) Alternative registration of professional employer organizations
13 under s. ~~461.02~~ 202.22 (7) (a) and (b).

14 (3) Minimum requirements for issuance or renewal of a registration under s.
15 ~~461.02~~ 202.22 (8).

16 SECTION 70. 461.10 of the statutes is renumbered 202.10 and amended to read

17 SECTION 71. 635.02 (7) (b) 3. of the statutes is amended to read:

18 635.02 (7) (b) 3. A professional employer organization, as defined in s. 461.01
19 202.21 (5), or a professional employer group, as defined in s. ~~461.01~~ 202.21 (4), that
20 provides health care benefits to more than 50 employees performing services for a
21 client, as defined in s. ~~461.01~~ 202.21 (2). ✓

22 SECTION 9138. Nonstatutory provisions; Safety and Professional
23 Services.

create autoref -41- to use on p. 43

1 (1) TRANSFER OF REGULATION OF CHARITABLE ORGANIZATIONS, FUND-RAISING
2 COUNSEL, PROFESSIONAL FUND-RAISERS, PROFESSIONAL EMPLOYER ORGANIZATION^S AND
3 PROFESSIONAL EMPLOYER GROUPS.

4 (a) *Assets and liabilities.* On the effective date of this paragraph, the assets and
5 liabilities of the department of safety and professional services primarily related to
6 the regulation of charitable organizations, fund-raising counsel, professional
7 fund-raisers, professional employer organizations, and professional employer
8 groups, as determined by the secretary of administration, including any

9 unencumbered moneys from fees the department of safety and professional services
10 has collected from charitable organizations, fund-raising counsel, professional
11 fund-raisers, professional employer organizations, and professional employer

12 groups, shall become the assets and liabilities of the department of financial
13 institutions. ✓

14 (b) *Tangible personal property.* On the effective date of this paragraph, all
15 tangible personal property, including records, of the department of safety and
16 professional services that is primarily related to the regulation of charitable
17 organizations, fund-raising counsel, professional fund-raisers, professional
18 employer organizations, and professional employer groups, as determined by the
19 secretary of administration, is transferred to the department of financial
20 institutions. ✓

21 (c) *Contracts.* All contracts entered into by the department of safety and
22 professional services in effect on the effective date of this paragraph that are
23 primarily related to the regulation of charitable organizations, fund-raising counsel,
24 professional fund-raisers, professional employer organizations, and professional
25 employer groups, as determined by the secretary of administration, remain in effect

1 and are transferred to the department of financial institutions. The department of
2 financial institutions shall carry out any obligations under such a contract until the
3 contract is modified or rescinded by the department of financial institutions to the
4 extent allowed under the contract.

5 (d) *Employee transfers.* On the effective date of this paragraph, all positions,
6 and the incumbent employees who hold those positions, in the department of safety
7 and professional services with duties that are primarily related to the regulation of
8 charitable organizations, fund-raising counsel, professional fund-raisers,
9 professional employer organizations, and professional employer groups, as
10 determined by the secretary of administration, are transferred to the department of
11 financial institutions.

12 (e) *Employee status.* Employees transferred under paragraph (d) have all the
13 rights and the same status under subchapter V of chapter 111 and chapter 230 of the
14 statutes in the department of financial institutions that they enjoyed in the
15 department of safety and professional services immediately before the transfer. ✓
16 Notwithstanding section 230.28 (4) of the statutes, no employee so transferred who
17 has attained permanent status in class is required to serve a probationary period. ✓

18 (f) *Rules and orders.* All rules promulgated by the department of safety and
19 professional services that relate to the regulation of charitable organizations,
20 fund-raising counsel, professional fund-raisers, professional employer
21 organizations, and professional employer groups, that are in effect on the effective
22 date of this paragraph, remain in effect until their specified expiration dates or until
23 amended or repealed by the department of financial institutions. All orders issued
24 by the department of safety and professional services relating to the regulation of
25 charitable organizations, fund-raising counsel, professional fund-raisers,

1 professional employer organizations, and professional employer groups that are in
2 effect on the effective date of this paragraph remain in effect until their specified
3 expiration dates or until modified or rescinded by the department of financial
4 institutions.

5 (g) *Pending matters.* Any matter pending with the department of safety and
6 professional services on the effective date of this paragraph that is primarily related
7 to the regulation of charitable organizations, fund-raising counsel, professional
8 fund-raisers, professional employer organizations, and professional employer
9 groups, as determined by the secretary of administration, is transferred to the
10 department of financial institutions and all materials submitted to or actions taken
11 by the department of safety and professional services with respect to the pending
12 matters are considered as having been submitted to or taken by the department of
13 financial institutions. ✓

14 08 (h) *Fees.* All fees for initial registrations and renewals of registrations under
15 subchapter IV of chapter 440 of the statutes and under chapter 461 of the statutes
16 that are in effect on the day before the effective date of this paragraph shall remain ✓
17 in effect until modified by the department of financial institutions under section
18 202.18 of the statutes, as created by this act. ✓

19 **SECTION 9438. Effective dates; Safety and Professional Services.** ✓

20 (1) REGULATION OF CHARITABLE ORGANIZATIONS, FUND-RAISING COUNSEL,
21 PROFESSIONAL FUND-RAISERS, PROFESSIONAL EMPLOYER ORGANIZATIONS, AND
22 PROFESSIONAL EMPLOYER GROUPS. The treatment of sections 73.0301 (1) (d) 6., 108.02
23 (21e) (intro.), 125.06 (11), 134.73 (1) (a) and (c), 165.825, 181.0203 (3), 196.208 (5p)
24 (a) 1., 440.03 (7m), 440.05 (intro.), and 635.02 (7) (b) 3. of the statutes, the repeal of
25 sections 440.03 (13) (b) 29., 57m., and 58., 440.08 (2) (a) 23m., 35m., 63p., and 63t.,

321.60(1)(a) 12. ✓

amendment

and

1 and 461.02 (3) and (5) (b) and (c) of the statutes, the renumbering of chapter 461 ✓
2 (title), subchapter IV (title) of chapter 440, and sections 440.41 (1), (2) (intro.) and ✓✓
3 (a), (4), (8), (9) (intro.), (a), and (d) 1., 2., and 3., and (10), 461.02 (title), (5) (title) and ✓✓
4 (d), (6), and (9), ~~461.04 and 461.10~~ of the statutes, the renumbering and amendment
5 of sections 440.41 (2) (b), (3), (5), (6), (7), (9) (b), (c), and (d) (intro.), 440.42, 440.43,
6 440.44, 440.45, 440.455, 440.46, 440.47, 440.475, 440.48, and 461.01, 461.02 (1), (2),
7 (3), (4), (5) (a) and (e), (6), (7), and (8), 461.03, 461.05, ~~and 461.06~~ of the statutes, the
8 creation of chapter 202 and sections 45.44 (1) (a) 11m. and 49.857 (1) (d) 14m. of the
9 statutes, and SECTION 9138 (1) of this act take effect on October 1, 2013, or the first
10 day of the 4th month beginning after publication, whichever is later. (on)
11

(END)

use a.r. X
from page

41

d-note

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0221/P1dn

MPG:.....

js

- date -

Brian:

Please review this draft carefully to ensure that it is consistent with the intent.

As requested, I merged LRB-0323 (BB0027) with this draft.

Also as requested, this draft creates general duties and powers for DFI concerning DFI's regulation under the draft of charitable organizations, fund-raising counsel, professional fund-raisers, professional employer organizations, and professional employer groups that parallel the general duties and powers DSPS has under current law concerning the professions DSPS, or a board under DSPS, regulates. You should review the draft and subch. I of ch. 440 carefully to ensure that the draft includes all of the general duties and powers you want DFI to have under the draft. Note that I did not copy the language from subch. I of ch. 440 word-for-word, but the changes I did make are primarily technical edits to the existing language in an effort to conform that language to current LRB drafting conventions.

As we discussed, the draft eliminates certain statutory fees for the relevant professions being transferred to DFI, and the draft includes a provision directing DFI to establish those fees based on its administrative costs. Current fees remain in effect until adjusted by DFI.

If you have any questions, please do not hesitate to contact me.

Thank you.

Michael Gallagher
Legislative Attorney
Phone: (608) 267-7511
E-mail: michael.gallagher@legis.wisconsin.gov

**2013-2014 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0221/P1ins2

MPG:.....

INSERT 3-4~~B~~

^

SECTION 1. 55.043 (4) (b) 5g. of the statutes is created to read:

55.043 (4) (b) 5g. Refer the case to the department of financial institutions if the financial exploitation, neglect, self-neglect, or abuse involves an individual who is required to be registered under s. 202.13 or 202.14.

END INSERT 3-4~~B~~

✓

**2013-2014 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0221/P1ins
MPG:.....

✓ 1 INSERT 3-2

2 ~~SECTION 46.90~~ (5m) (br) 5g. of the statutes is created to read:

3 46.90 (**5m**) (br) 5g. Refer the case to the department of financial institutions
4 if the financial exploitation, neglect, self-neglect, or abuse involves an individual
5 who is required to be registered under s. 202.13 or 202.14. ✓

6 END INSERT 3-2

7 INSERT 3-4 ~~4~~ A

✓ 8 ~~SECTION 54.15~~ (8) (a) 3. of the statutes is amended to read:

9 54.15 (**8**) (a) 3. Any license, certificate, permit, or registration of the proposed
10 guardian that is required under chs. 202 or 440 to 480 or by the laws of another state ✓
11 for the practice of a profession or occupation has been suspended or revoked.

12 END INSERT 3-4 ~~4~~ A

13 INSERT 16-23

✓ 14 ~~SECTION 321.60~~ (1) (a) 12. of the statutes is amended to read:

15 321.60 (1) (a) 12. A license or certificate of registration issued by the
16 department of financial institutions, or a division of it, under ss. 138.09, 138.12,
17 138.14, 202.13, 202.14, 217.06, 218.0101 to 218.0163, 218.02, 218.04, 218.05, 224.72, ✓
18 224.725, or 224.93 or subch. IV of ch. 551.

19 END INSERT 16-23

20 INSERT 33-17

✓ 21 **202.21 Definitions.** (intro.) In this chapter subchapter:

22 END INSERT 33-17

23 INSERT 36-11

1 202.22 (6) PROFESSIONAL EMPLOYER GROUP REGISTRATION. Except as provided in
2 sub. (7) (b), 2 or more professional employer organizations that are part of a
3 professional employer group may register under this section or renew a registration
4 by providing the information required under sub. (2), (4), or (5) on a combined or
5 consolidated basis, paying the initial ~~credential~~ registration or renewal fee
6 determined by the department under s. 440.03 (9) (a) ~~202.08~~[✓], and guaranteeing each
7 other's obligations. If a professional employer group provides a combined or
8 consolidated financial statement under sub. (2) (f) 1. that includes the financial
9 condition of entities that are not part of the professional employer group, the
10 controlling person controlling the professional employer group shall guarantee the
11 obligations of the professional employer organizations in the professional employer
12 group.

13 END INSERT 36-11

14 INSERT 39-15

15 202.24 (3) LICENSING. Nothing in this ~~chapter~~ subchapter or in any contract for
16 the provision of the nontemporary, ongoing workforce of a client may be construed
17 to affect or impair any federal, state, or local licensing, registration, or certification
18 requirement that is applicable to a client or to an employee performing services for
19 a client.

20 END INSERT 39-15

21 INSERT 40-9

22 (4) INJUNCTION. If it appears upon complaint to the department by ~~any person~~
23 or it is ~~known~~ to the department otherwise has notice ^{knows} that any person is ~~violating~~ has
24 violated this ~~chapter~~ subchapter, the department or the district attorney of the
25 proper county may investigate and may, in addition to any other remedies, bring

1 action in the name of and on behalf of the state against ~~any such~~ that person to enjoin
2 ~~such~~ the person from ~~such~~ committing further violations of this subchapter.

3 (5) JUDICIAL REVIEW. Any person who is aggrieved by any action taken under
4 this ~~chapter~~ subchapter by the department, its officers, or agents may apply for
5 judicial review as provided in ch. 227.

6 END INSERT 40-9

7 INSERT 40-11

8 **202.26 Rules.** (intro.) The department shall promulgate rules to implement
9 this ~~chapter~~ subchapter. Those rules shall include rules providing for all of the
10 following:

11 END INSERT 40-11

12 INSERT 40-13

13 (2) Reasonable fees for any service provided under this ~~chapter~~ subchapter
14 that do not exceed an amount that is necessary to cover the cost of providing that
15 service.

16 END INSERT 40-13

17 INSERT 40-16

18 **202.29 Short title.** This ~~chapter~~ subchapter shall be known as the "Wisconsin
19 Professional Employer Organizations Act."

20 END INSERT 40-16

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0221/P1dn
MPG:cjs:rs

January 31, 2013

Brian:

Please review this draft carefully to ensure that it is consistent with the intent.

As requested, I merged LRB-0323 (BB0027) with this draft.

Also as requested, this draft creates general duties and powers for DFI concerning DFI's regulation under the draft of charitable organizations, fund-raising counsel, professional fund-raisers, professional employer organizations, and professional employer groups that parallel the general duties and powers DSPS has under current law concerning the professions DSPS, or a board under DSPS, regulates. You should review the draft and subch. I of ch. 440 carefully to ensure that the draft includes all of the general duties and powers you want DFI to have under the draft. Note that I did not copy the language from subch. I of ch. 440 word-for-word, but the changes I did make are primarily technical edits to the existing language in an effort to conform that language to current LRB drafting conventions.

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If you have any questions, please do not hesitate to contact me.

Thank you.

Michael Gallagher
Legislative Attorney
Phone: (608) 267-7511
E-mail: michael.gallagher@legis.wisconsin.gov

From: Quinn, Brian D - DOA <Brian.Quinn@wisconsin.gov>
Sent: Monday, February 04, 2013 10:03 AM
To: Gallagher, Michael
Subject: 13-0221_P1 Edits

Importance: High

Mike,

DFI had the following edits:

- DFI had the following edits:
- Page 6, line 11: Insert a "." after "certificate", and strike "signed by the governor."
 - Page 6, line 12: strike "by rule"
 - Page 7, line 15: Line should read: "comply with the requirement under (d)."
 - Page 7, line 18: Strike the sentence beginning with "The department shall..."
 - Page 7, line 22: Insert a "." after "crime", and strike the rest of the paragraph
 - Page 8, line 4: Replace "shall" with "may"
 - Page 8, line 24: Insert a "." After "fee" and strike the rest of the sentence ("of \$25.")
 - Page 9, line 1: Strike all of this section (b)
 - Page 9, line 9: Insert "registration or" before "renewal" in the intro.
 - Page 9, line 10: Insert "or registration" after the word "registration"
 - Page 9, line 11: Insert "registration or" before the word "renewal"
 - Page 9, line 15: Replace "mail to" with "provide"
 - Page 9, line 17: Replace "mailed" with "provided"
 - Page 13, line 3: Strike the entire "202.065 Assessment of costs" section
 - Page 14, line 16: Strike sub. (4) and (5) and replace with "(4) An administrative warning is a public record subject to inspection or copying under s. 19.35."
 - Page 15, line 17: Strike "biennially"
 - Page 15, line 18: Insert "and late fees" after the word "renewal"
 - Page 15, line 20: Insert a "." After "costs" and strike the rest of the paragraph.
 - Page 15, line 25: Replace "shall" with "may"
 - Page 16, line 11: Replace "mail" with "provide"
 - Page 16, line 25: There seems to be a typo here, this line is out of place.
 - Page 17, line 1: There seems to be a typo here, this line is out of place.
 - Page 21, line 23: Strike "," and insert "annually in a form and manner prescribed" after "department"
 - Page 22, line 3: Replace "Within 20 days after receiving" with "Upon review of"
 - Page 22, line 7: Insert ", electronic mail address if available" after "address"
 - Page 24, line 19: replace "on a form provided" with "in a form and manner prescribed"
 - Page 26, line 7: replace "on a form provided" with "in a form and manner prescribed"
 - Page 26, line 12: Replace "Within 20 days after receiving" with "Upon review of"
 - Page 35, line 1: replace "on a form provided" with "in a form and manner prescribed"

DFI also had the following areas of generally commentary:

- One set of uniform disciplinary/enforcement provisions under subchapter one, including the ability of the department to issue special and general orders. Under the current draft there are some provisions under subchapter one and additional provisions under subchapters two and three – this is cumbersome.

- As noted above, there are several areas that say “within 20 days” we would prefer this to say “upon review” (the sections that were re-numbered and not amended may need to be amended to reflect this change). ✓
- As noted above, there are several areas that say “on a form provided by” the department, we would prefer this to say “in a form and manner prescribed by” the department. This will ensure that we are able to use electronic forms where appropriate (the sections that were re-numbered and not amended may need to be amended to reflect this change). ✓
- ? • DSPS had submitted a whitepaper on 440.42 regarding a statutory change to align Wisconsin statutes with the I.R.S. code when a charitable org. requests an extension of their reporting – the IRS can grant up to a one-year extension while state law allows for only six months. We would support changing our statutes. ✓
- A section added to subsection 1 of 202 that makes clear the Department may promulgate rules to enforce the provisions of ch. 202. There are some references to rules throughout, but this section would just make it very clear. ✓
- Provide that renewals more than 60 days late will not be accepted (i.e., a licensee would have to re-register, and could no longer just renew). ✓
- **A major concern of ours, and perhaps our most major concern is the ability to accept everything electronically at the department. I think we’ve covered most of the changes that need to be made to ensure we have that ability, but there may be areas we’ve missed.** ✓

Our office, separately, had these edits between me and our DSPS analyst:

- a. 202.02(5) removed DHS from the list of departments that DFI shall cooperate with. It seems to us that DHS should still be on that list, or is this in reference to a non-analogous provision? ✓
- b. 202.02(6)(b) added “U.S.” – “a registrant who is a convicted felony or misdemeanor anywhere in the U.S.” DSPS language is just “anywhere.” Our view is that this should be left as it is in the DSPS language since oversees criminal infractions are worth considering in this context, unless the DSPS language was implicitly only referring to convictions within the U.S. without saying so explicitly. ✓

Let me know if you have questions. I’ll be in the office all day and fairly late if need be.

Brian Quinn
 Executive Policy and Budget Analyst
 Wisconsin Department of Administration
 Division of Executive Budget and Finance
 (608)-266-1923
Brian.quinn@wisconsin.gov

Gallagher, Michael

From: Gallagher, Michael
Sent: Monday, February 04, 2013 1:27 PM
To: Quinn, Brian D - DOA
Subject: RE: 13-0221_P1 Edits

2/4 - T/c w/ Brian Q.

Brian: I have a couple of quick comments:

Regarding the following bullet point that mentions a white paper submitted by DSPS regarding a tax issue for charitable organizations, I have not seen that. If a tax draft on that issue is needed for the budget, you should contact Joe Kreye.

- DSPS had submitted a whitepaper on 440.42 regarding a statutory change to align Wisconsin statutes with the I.R.S. code when a charitable org. requests an extension of their reporting – the IRS can grant up to a one-year extension while state law allows for only six months. We would support changing our statutes.

↳ Don't do anything.

Regarding the following bullet point, any agency, under ch. 227, may promulgate rules interpreting the laws it administers or establishing relevant procedures. However, if DFI wants a provision requiring rules promulgation under ch. 202 beyond what is already in the draft, or if DFI wants to specify a power to promulgate rules that does not fall under the general authorization to promulgate rules under ch. 227, please let me know.

- A section added to subsection 1 of 202 that makes clear the Department may promulgate rules to enforce the provisions of ch. 202. There are some references to rules throughout, but this section would just make it very clear. ✓

↳ include as a requirement

Regarding the following bullet point, DFI can already require electronic submission of forms, etc., under its general authority to establish procedures and promulgate rules establishing procedures under s. 227. However, I can and will include a provision explicitly authorizing DFI to require electronic submission of forms, etc., to address this concern.

- **A major concern of ours, and perhaps our most major concern is the ability to accept everything electronically at the department. I think we've covered most of the changes that need to be made to ensure we have that ability, but there may be areas we've missed.** ✓

↳ just make sure no restrictions.

Here are my responses to your questions:

- a. DHS was removed because it does not appear relevant here. It is included for DSPS because DSPS regulates doctors and other professions impacting human health. Does that make sense? ✓
- b. You are quite right. I will get rid of the U.S. qualification. ✓

I should have this into editing either today or early tomorrow morning.

Mike

From: Quinn, Brian D - DOA [mailto:Brian.Quinn@wisconsin.gov]
Sent: Monday, February 04, 2013 1:01 PM

To: Gallagher, Michael
Subject: RE: 13-0221_P1 Edits

Thanks much.

From: Gallagher, Michael [<mailto:Michael.Gallagher@legis.wisconsin.gov>]
Sent: Monday, February 04, 2013 12:15 PM
To: Quinn, Brian D - DOA
Subject: RE: 13-0221_P1 Edits

I'm not sure. I'm working on it now. I'll keep you updated.

Mike Gallagher
Attorney
Wisconsin Legislative Reference Bureau

From: Quinn, Brian D - DOA [<mailto:Brian.Quinn@wisconsin.gov>]
Sent: Monday, February 04, 2013 12:11 PM
To: Gallagher, Michael
Subject: RE: 13-0221_P1 Edits

Thanks. When do you think we might expect the revised draft back?

-Brian Q.

From: Gallagher, Michael [<mailto:Michael.Gallagher@legis.wisconsin.gov>]
Sent: Monday, February 04, 2013 11:46 AM
To: Quinn, Brian D - DOA
Subject: RE: 13-0221_P1 Edits

Okay. I'll take a look.

From: Quinn, Brian D - DOA [<mailto:Brian.Quinn@wisconsin.gov>]
Sent: Monday, February 04, 2013 10:03 AM
To: Gallagher, Michael
Subject: 13-0221_P1 Edits
Importance: High

Mike,

DFI had the following edits:

- Page 6, line 11: Insert a "." after "certificate", and strike "signed by the governor."
- Page 6, line 12: strike "by rule"
- Page 7, line 15: Line should read: "comply with the requirement under (d)."
- Page 7, line 18: Strike the sentence beginning with "The department shall..."
- Page 7, line 22: Insert a "." after "crime", and strike the rest of the paragraph
- Page 8, line 4: Replace "shall" with "may"
- Page 8, line 24: Insert a "." After "fee" and strike the rest of the sentence ("of \$25.")
- Page 9, line 1: Strike all of this section (b)
- Page 9, line 9: Insert "registration or" before "renewal" in the intro.
- Page 9, line 10: Insert "or registration" after the word "registration"

- Page 9, line 11: Insert “registration or” before the word “renewal”
- Page 9, line 15: Replace “mail to” with “provide”
- Page 9, line 17: Replace “mailed” with “provided”
- Page 13, line 3: Strike the entire “202.065 Assessment of costs” section
- Page 14, line 16: Strike sub. (4) and (5) and replace with “(4) An administrative warning is a public record subject to inspection or copying under s. 19.35.”
- Page 15, line 17: Strike “biennially”
- Page 15, line 18: Insert “and late fees” after the word “renewal”
- Page 15, line 20: Insert a “.” After “costs” and strike the rest of the paragraph.
- Page 15, line 25: Replace “shall” with “may”
- Page 16, line 11: Replace “mail” with “provide”
- Page 16, line 25: There seems to be a typo here, this line is out of place.
- Page 17, line 1: There seems to be a typo here, this line is out of place.
- Page 21, line 23: Strike “,” and insert “annually in a form and manner prescribed” after “department”
- Page 22, line 3: Replace “Within 20 days after receiving” with “Upon review of”
- Page 22, line 7: Insert “, electronic mail address if available” after “address”
- Page 24, line 19: replace “on a form provided” with “in a form and manner prescribed”
- Page 26, line 7: replace “on a form provided” with “in a form and manner prescribed”
- Page 26, line 12: Replace “Within 20 days after receiving” with “Upon review of”
- Page 35, line 1: replace “on a form provided” with “in a form and manner prescribed”

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SECTION 22. 440.08 (2) (a) 35m. of the statutes is repealed.

SECTION 23. 440.08 (2) (a) 63p. of the statutes is repealed.

SECTION 24. 440.08 (2) (a) 63t. of the statutes is repealed.

SECTION 25. Subchapter IV (title) of chapter 440 [precedes 440.41] of the statutes is renumbered subchapter II (title) of chapter 202 [precedes 202.11].

SECTION 26. 440.41 (intro.) of the statutes is renumbered 202.11 (intro.).

SECTION 27. 440.41 (1) of the statutes is renumbered 202.11 (1).

SECTION 28. 440.41 (2) (intro.) of the statutes is renumbered 202.11 (2) (intro.).

SECTION 29. 440.41 (2) (a) of the statutes is renumbered 202.11 (2) (a).

SECTION 30. 440.41 (2) (b) of the statutes is renumbered 202.11 (2) (b) and amended to read:

202.11 (2) (b) A benevolent, educational, philanthropic, humane, scientific, patriotic, social welfare or advocacy, public health, environmental conservation, civic, or other eleemosynary objective.

SECTION 31. 440.41 (3) of the statutes is renumbered 202.11 (3) and amended to read:

202.11 (3) “Charitable sales promotion” means an advertising or sales campaign, that is conducted by a person who is regularly and primarily engaged in trade or commerce for profit other than in connection with soliciting, ~~which~~ and that represents that the purchase or use of goods or services offered will benefit, in whole or in part, a charitable organization or charitable purpose.

SECTION 32. 440.41 (4) of the statutes is renumbered 202.11 (4).

SECTION 33. 440.41 (5) of the statutes is renumbered 202.11 (5) (intro.) and amended to read: